

49 CFR Part 23 OVERVIEW

Presented to: Airport Sponsors and Consultants

By: Patricia White & Christine Whitehead, ACR

Date: May 7, 2008



**Federal Aviation
Administration**



Your Speakers

Patricia A. White

External Program Manager

Western Pacific Region, Civil Rights Staff

310-725-3942, patricia.a.white@faa.gov



Christine Whitehead

External Program Manager

Northwest Mountain Region, Civil Rights Staff

425-227-2095, christine.whitehead@faa.gov



ACDBE Overview

- ***Airport Concessions Disadvantaged Business Enterprise (ACDBE) final rule (49 CFR Part 23),***
 - *Published in the Federal Register March 22, 2005*
 - *Effective on April 21, 2005*
- ***Affects approximately 350 primary airports***
- ***Rule is narrowly tailored***

ACDBE Submission Deadlines

Primary Airports must Submit on the Following Schedule

	Revised program and 1st overall goal	2nd overall goal	Subsequent overall goals
Large/Medium Hubs	January 1, 2006	October 1, 2008	Every three years thereafter
Small Hubs	October 1, 2006	October 1, 2009	Every three years thereafter
Non-Hub Primary	October 1, 2007	October 1, 2010	Every three years thereafter





Sponsors with Multiple Airports

You may establish one overall ACDBE plan, but..... You must submit separate ACDBE goals for each primary airport.

Overview of the ACDBE Goal Setting Process



Do I Have to Submit ACDBE Goals?

- **Are you a Primary Airport?**
 - No = No goals required
- **Do your average annual car rental concession revenues over the preceding 3 years exceed \$200,000?**
 - No = No Car rental goal not required
 - Yes = Car rental goal required
- **Do your average annual non-car rental concession revenues over the preceding 3 years exceed \$200,000?**
 - No = No non-car rental concession goal required
 - Yes = Non-car rental concession goal required



Tools for Goal Setting



- 49 CFR Part 23
- **DRAFT** Sample Plan Attachments 4 & 5
 - Note: This sample is only a draft. There will likely be changes to it.
- Tips on ACDBE Goal Setting (Coming)

Amount of Goal

Non-Car Rental Concessions

- **% Gross Receipts**
 - Not: Car rental, mgmt contract or subcontract w/ non-ACDBE, receipts not generated from concession activity.
- **Market Area:**
“Substantial majority Concessionaires seek to do business at airport...”

Car Rental Concessions

- **% Car Rental Gross Receipts**
- **Market Area:**
“Substantial majority Concessionaires seek to do business at airport...”



Goal Setting: Step One

Determining ACDBE Availability

Option #1

Total ACDBEs in Market Area

Total Concessions in Market Area

Data Resources:

- ACDBE Directory (numerator)
- MWBE & Trade Directories (numerator)
- Active Participant List (numerator & denominator)
- Census Bureau (denominator)



Goal Setting: Step One

Determining ACDBE Availability

Option #2

Disparity Study –

- You may use the % derived from a disparity study.
- Must show the study's validity and applicability

Option #3

Goal of Another Sponsor –

- Must explain how your concession opportunity has the same, or substantially similar market as the other sponsor's.
- Their overall goal must be in compliance with 49 CFR Part 23.



Goal Setting: Step One

Determining ACDBE Availability

Option #4

Alternative Methods –

- *Based on demonstrable evidence of local market conditions*
- *Rationally related to the relative availability of ACDBEs in your market area.*

Car Rental Alternative

- *If goal is likely to be met through **vehicle or other goods and services purchases from ACDBE car rental companies**, you may structure the goal in terms of goods and services purchases.*
- *Divide*
estimated dollar value of the purchases from ACDBEs
total estimated dollar value of all such purchases by car rental companies.
23.51(c)(5)(ii).



Goal Setting: Step 2 Adjustment

- **Past Participation**
- **Disparity Study**
- **Differences in Market Area**
 - Required if you used another sponsors goal
 - Describe market area and concession differences
- **Available Evidence from Related Fields Regarding ACDBE ability to form/grow**
 - Statistical disparities in bonding, financing, etc
 - Employment, self-employment, education data, etc



Past Participation Example

Year	Goal	Achievement
2000	10%	14%
2001	12%	12%
2003	15%	28%

Median Achievement = 14%

Average Step 1 & Median Achievement

$(11.2 + 14)/2 = 12.6\%$ Adjusted Goal



No Disparity Study?

“We have been unable identify a disparity study in our jurisdiction. However, we will continue to contact state and local agencies to determine when one becomes available.”





Goal Setting: Consultation w/ Stakeholders

- **REQUIRED** prior to goal submission
- **MUST** include consultation w/
 - *women's business groups,*
 - *community organizations,*
 - *trade associations representing concessionaires currently at the airport,*
 - *existing concessionaires, and*
 - *other officials or organizations which could be expected to have information concerning*
 - *the availability of disadvantaged businesses,*
 - *the effects of discrimination on opportunities for ACDBEs,*
 - *the sponsor's efforts to increase participation of ACDBEs.*
- **Must list who you consulted with & summarize comments you received.**



Projection of Race Neutral/Race Conscious Participation

RN – Measures to increase opportunities for all small businesses

- Notification to potential all concessionaires
- Describing ACDBE program in pre-solicitation meetings.

RC – Conscious action to get ACDBEs

- Concession specific goals
- Negotiate w/ potential concessionaires to include ACDBEs
- Other methods to consider participation in the award process

NEW – You **MUST** also describe the RC actions you will take to meet your goal.



Projection of Race Neutral/Race Conscious Participation

- **Past participation**
 - Amount exceeding concession goals
 - Participation on concessions w/o goals
- **Other participation sources (MBE/WBE)**
 - Other airports (similar size & market area)
 - FHWA, FTA, city, county, school projects
- **Information from consultation**



Past Participation Example

<u>Year</u>	<u>Goal</u>	<u>RN%</u>	<u>RC%</u>	<u>Attain</u>	<u>Actual RN % over RC</u>
'01	10%	5%	5%	13%	8%
'02	12%	6%	6%	13%	7%
'03	10%	6%	4%	11%	5%

Median % RN Participation = 7%



What if there is no data anywhere?





Answer the Following Questions

- **Do you think you will get ACDBE participation without a concession specific goal?**
- **How much?**
- **How did you arrive at this number?**
 - ACDBEs are known to primes and competitive.
 - Concessionaires have their own network and it does not include ACDBEs.

GOOD NEWS



**Public Notice of the ACDBE Goal is
NOT required.**



When to Update Your ACDBE Goals

Whenever you get a new concession that is expected to average annual gross receipts in excess of \$200K.

You must update the goal 6 months prior to entering into a new concession agreement.

The End – Thank You!

